

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

NOTICE OF BREACH OF PLEA AGREEMENT

Comes now the United States of America, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and submits the above-captioned notice. In support of this notice the Government offers the following:

1. On February 13, 2006, a federal Grand Jury sitting in the Middle District of Alabama returned a one-count indictment against the Defendant for violations of Title 18, United States Code, Section 659, in that: on or about December 28, 2005, the defendant, Phillip Foy, did knowingly buy and receive stolen goods, having a value of more than \$1,000, when such goods were stolen from a pipeline system, motortruck, and other vehicle, and from a storage facility and station carrying an interstate shipment of freight.

2. On December 18, 2006, the United States and the Defendant entered into a plea agreement (Doc 21.) pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C).

3. A pertinent clause of the plea agreement, DEFENDANT'S UNDERSTANDING AND ACKNOWLEDGEMENT 4b, specifically states:

Defendant acknowledges that a breach of this federal plea agreement, to include committing another federal, state, or local offense prior to sentencing on the pending charge, will not entitle him to withdraw his guilty plea in this case. Defendant understands and acknowledges that defendant's guilty plea will remain in full force and effect upon any breach of this agreement by the defendant. Defendant further understands that should he breach this agreement, this agreement will be null and void and he will be prosecuted for all offenses of which

the government has knowledge. The parties agree that the Government will be the sole authority to decide whether Defendant has breached this Agreement.

4. On December 18, 2006, the Defendant entered a plea of guilty to the one-count Indictment.

5. On or about March 5, 2007, the United States learned that Defendant Phillip Foy, after executing the agreement between the parties and after entry of his guilty plea, engaged in additional criminal conduct, to-wit: Phillip Foy knowingly and intentionally sold illegal narcotics (cocaine base or "crack") to another, in violation of the laws of the State of Alabama.

6. Therefore, the United States is relieved of its obligations of the terms and conditions of the plea agreement. See paragraph 4(b) of Plea Agreement, since, under the terms of the plea agreement, the defendant has voided the agreement by engaging in subsequent criminal activity prior to sentencing on the present Federal Indictment.

7. The United States affirms that, pursuant to the Agreement (Doc.21) of the parties, the Defendant may not withdraw his guilty plea and is subject to being sentenced as if he had not entered a plea agreement with the United States.

Respectfully submitted this 30th day of March, 2007.

LEURA G. CANARY
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UNITED STATES OF AMERICA)
v.) CR. NO. 2:06-cr-219-WKW
PHILLIP FOY)

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to: Richard Keith, Esquire.

Respectfully submitted,

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UNITED STATES ATTORNEY

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